

REMARKS

The Applicants thank the Examiner for the detailed Final Office Action dated March 16, 2005. The Applicants respectfully request reconsideration of the present Application in view of the foregoing amendments and in view of the reasons that follow.

Status of the Claims

Claims 33, 34, 37, and 40-42 are currently being amended. Claims 43-58 are being added. After amending the claims as set forth above, Claims 1-58 are now pending in this application.

Claim Rejections – 35 U.S.C. § 103(a)

In Section 2 of the Office action, the Examiner rejected Claims 33-40 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,499,588 (“Bartilson et al. ‘588”) in view of U.S. Patent No. 3,563,426 (“Bartilson ‘426”). The Examiner stated:

Bartilson et al. disclose a closure (10) for a container (12), which comprises a base including at least one opening (46) for dispensing a material from the container, a top portion (14) coupled to the base having at least one flap (20) movable about a hinge (22) between an open position for dispensing the material and a closed position for covering the opening (col. 4, ll. 16-60), a first elongate recess (16) and a second elongate recess (col. 4, ll. 16-25). A first projection (40) extending from a first side of the flap, a second projection (38) extending from a second side of the flap, so that the first projection is configured to fit at least partially within the first elongate recess and the second projection is configured to fit at least partially within the second elongate recess when the flap is in the closed position (col. 4, ll. 61-67), a spooning flap (col. 4, ll. 26-34).

The Examiner the acknowledged that Bartilson et al. ‘588 “lack that an interface extending from the flap.” However, the Examiner stated that “Bartilson teaches the use of a flap (66) having an interface (62) extending from the flap as seen in Figure 7.” The Examiner thus concluded that “[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure of Bartilson et al. including the base by

providing Bartilson's interface onto the flap as taught by Bartilson in (col. 5, ll. 1-45), in order to provide an additional means for releasably securing the flap/cover in the closed position."

Claim 33 is in independent form. Dependent Claims 34-40 depend from independent Claim 33. Claim 33 (as amended) recites a combination including, among other elements, "a first recess and a second recess . . . wherein the first recess and the second recess each include a closed bottom portion to prevent any material from passing through the first elongate recess and the second elongate recess."

The subject matter recited in independent Claim 33 (and corresponding dependent Claims 34-40) would not have been obvious over Bartilson et al. '588 in view of Bartilson '426 under 35 U.S.C. § 103(a). Bartilson et al. '588 shows a "plastic container top with combination closure and sprinkler" having a "container top 10 [that] comprises wall member 14 which in the illustrated embodiment is substantially flat." Col. 4, lines 16-17. "Wall member 14 has at least one opening therethrough generally indicated at 16, said opening preferably having at least one straight side 18 (FIGS. 3 and 4) to which cover 20 is integrally molded along a thinned section 22." Col. 4, lines 19-23. "Perforated sprinkler plate 46 is integrally molded to the inner surface of wall member 14 and extends substantially across opening 16." Col. 4, lines 68-70. "Perforated sprinkler plate 46 has side slots 56 and 58 which receive rails 38 and 40, respectively, when cover 20 is flexed to the closed position." Col. 5, lines 46-49. "Side slots 56 and 58 are sufficiently small that the salt dispensed therethrough does not mar the desired sprinkling effect. If desired, however, the salt stream exiting therethrough can be broken up into multiple streams by molding perforated lower webs 62 and 64 on the underside of slots 56 and 58, respectively. The apertures in webs 62 and 64 also permit salt to fall back into the container so that rails 38 and 40 can enter slots 56 and 58 without significant interference." Col. 5, lines 61-69.

The combination of Bartilson et al. '588 and Bartilson '426 would not result in the subject matter recited in independent Claim 33, as amended, or corresponding dependent Claims 34-40. Neither Bartilson et al. '588 nor Bartilson '426, alone or in any proper combination, discloses, teaches or suggests a first recess and a second recess where each

recess includes “a closed bottom portion to prevent any material from passing through the first recess and the second recess,” as recited in independent Claim 33, as amended, and in dependent Claims 34-40. Moreover, the suggestion to make the combination of Bartilson et al. ‘588 and Bartilson ‘426 has been taken from the Applicants' own specification (using hindsight), which is improper. Furthermore, to transform the combination of Bartilson et al. ‘588 and Bartilson ‘426 to the “closure for a container” recited in Claims 33-40 would require still further modification, and such modification is taught only by the Applicants' own disclosure.

The subject matter recited in independent Claim 33 (as amended) and corresponding dependent Claims 34-40, considered as a whole, would not have been obvious to a person having ordinary skill in the art. The rejection of Claims 33-40 over Bartilson et al. ‘588 in view of Bartilson ‘426 under 35 U.S.C. § 103(a) is improper. Therefore, Claims 33-40 are patentable over Bartilson et al. ‘588 in view of Bartilson ‘426. Applicants respectfully request reconsideration and allowance of Claims 33-40.

In Section 3 of the Office action, the Examiner rejected Claims 41-42 under 35 U.S.C. § 103(a) as being unpatentable over Bartilson et al. ‘588 in view of Bartilson ‘426 as applied to Claim 33 and further in view of U.S. Patent No. 3,262,606 (“Waterman”). The Examiner acknowledged that combination of Bartilson et al. ‘588 and Bartilson ‘426 “have taught all the features of the claimed invention except that a third projection extending downward from a free end of the flap.” However, the Examiner stated that “Waterman teaches the use of a first, second and third projections (25) from a flap (14), where the first and second projection are interconnected by the third projection as seen in Figure 1.” The Examiner thus concluded that “[i]t would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Waterman’s teaching onto the flap of Bartilson et al. and Bartilson by adding a third projection as taught by Waterman in Figure 1 and (col. 3, ll. 1-73), in order to provide a peripheral skirt around the cover flap.”

Claims 41 and 42 ultimately depend from independent Claim 33, as amended. The subject matter recited in dependent Claims 41 and 42 would not have been obvious over Bartilson et al. ‘588 in view of Bartilson ‘426 and further in view of Waterman under 35

U.S.C. § 103(a). The combination of Bartilson et al. '588, Bartilson '426, and Waterman would not result in the subject matter recited in independent Claim 33, as amended, or corresponding dependent Claims 41 and 42. Neither Bartilson et al. '588, Bartilson '426, nor Waterman, alone or in any proper combination, discloses, teaches or suggests a first recess and a second recess where each recess includes “a closed bottom portion to prevent any material from passing through the first recess and the second recess,” as recited in independent Claim 33, as amended, and in dependent Claims 41 and 42. Moreover, the suggestion to make the combination of Bartilson et al. '588, Bartilson '426, and Waterman has been taken from the Applicants' own specification (using hindsight), which is improper. Furthermore, to transform the combination of Bartilson et al. '588, Bartilson '426, and Waterman to the “closure for a container” recited in Claims 33, 41, and 42 would require still further modification, and such modification is taught only by the Applicants' own disclosure.

The subject matter recited in Claims 33 (as amended), 41, and 42, considered as a whole, would not have been obvious to a person having ordinary skill in the art. The rejection of Claims 41 and 42 over Bartilson et al. '588 in view of Bartilson '426 and further in view of Waterman under 35 U.S.C. § 103(a) is improper. Therefore, Claims 41 and 42 are patentable over Bartilson et al. '588 in view of Bartilson '426 and further in view of Waterman. Applicants respectfully request reconsideration and allowance of Claims 41 and 42.

Statement of Reasons for the Indication Allowable Subject Matter

In Section 4 of the Office action, the Examiner stated that “Claims 1-32 are allowed.” In Section 5 of the Office action, the Examiner provided the following statement of reasons for allowance:

The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or render obvious in an integrally-formed cover for a container in combination with the other claimed limitations of claim 1:

“the projection extending from the shaker flap comprises a tab; and a guide provided with the tab so that movement of the shaker flap from the open position to the closed position

initially brings the guide into wedging interaction with an inner edge of the shaker opening and further movement of the shaker flap brings the tab into wedging interaction with the inner edge of the shaker opening; so that the shaker flap is retained in the closed position by the wedging interaction of the tab against the inner edge of the shaker opening”.

The prior art fails to disclose or render obvious in a closure for a container in combination with the other claimed limitations of claim 11:

“a guide extending from the projection; and a guide surface provided on the guide and configured to contact an edge of the opening when the flap is moved toward the closed position and configured to create a wedging interaction with the edge of the opening when the flap is moved further toward the closed position; so that the flap is retained in the closed position by the wedging interaction of the projection and the edge”.

Further, the prior art fails to disclose or render obvious in a closure for a container in combination with the other claimed limitations of claim 23:

“a second projection extending from the first projection; and a guide surface provided on the second projection and configured to contact a portion of the base adjacent the opening when the flap is moved toward the closed position and configured to create a wedging interaction with the portion of the base adjacent the opening when the flap is moved further toward the closed position; so that the flap is retained in the closed position by the wedging interaction of at least one of the first projection and the second projection with the portion of the base adjacent the opening”.

The Applicants thank the Examiner for the allowance of Claims 1-32. While the Applicants agree that allowed Claims 1-32 recite a combination of subject matter that is patentable over the cited references, the Applicants do not necessarily agree with or acquiesce in the statement of reasons for allowance given by the Examiner. Moreover, the Applicants note that the recited subject matter as well as various other subject matter and/or combinations of subject matter may be patentable for other reasons than those given by the Examiner. The Applicants expressly reserve the right to set forth additional and/or alternative

reasons for patentability and/or allowance in connection with the present Application or any other future proceeding.

New Claims

New dependent Claims 43-55 are added to state with more clarity the subject matter intended to be claimed by the Applicants. No new matter has been added.

New dependent Claims 56-58 are added to clarify that in the closure as disclosed and claimed the spooning flap is secured in the closed position by a wedging interaction between the tab on the spooning flap and the inner edge of the spooning opening and that the tab and the inner edge do not conform correctly in size or shape – i.e., do not create an "axially interfering fit" as shown in prior art U.S. Patent No. Re. 37,634. Compare FIGURES 4B and 4C of the present application with Figures 1, 4, 7 and 10 of U.S. Patent No. Re. 37,634. See instead U.S. Patent No. 3,018,931. No new matter has been added.

New Claims 43-56 depend, either directly or indirectly, from independent Claim 33. Accordingly, new Claims 43-56 are believed to be allowable for at least the same reasons independent Claim 33 is allowable.

New Claims 57-58 depend from independent Claim 11, which the Examiner has indicated is allowed. Accordingly, new Claims 57-58 are allowable for at least the same reasons that independent Claim 11 has been allowed.

* * * *

The Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a

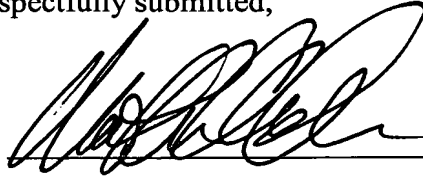
check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date

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By



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